

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 22-10640
v.)	
)	
ACEMCO INCORPORATED,)	
EATON CORPORATION,)	
FORD MOTOR COMPANY,)	
LINDE INC. (ON BEHALF OF)	
LINDE GAS, INC.),)	
MICHIGAN AUTOMOTIVE)	
COMPRESSOR, INC.,)	
NACHI MACHINING TECHNOLOGY)	
COMPANY,)	
PERMA-FIX OF MICHIGAN, INC.)	
(ON BEHALF OF CHEM MET)	
SERVICES, INC.),)	
RIMA MANUFACTURING COMPANY,)	
SAMUEL, SON & CO. (USA) INC.,)	
SCHULTZ, INC.,)	
TRIMAS CORPORATION (ON BEHALF)	
OF HI-VOL PRODUCTS AND)	
DRAW-TITE),)	
VALASSIS COMMUNICATIONS,)	
INCORPORATED,)	
WEAVERTOWN TRANSPORT)	
LEASING, INCORPORATED,)	
and)	
WORTHINGTON STEEL OF)	
MICHIGAN,)	
)	
Defendants.)	

CONSENT DECREE – APPENDIX A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Dearborn Refining Site
3901 Wyoming
Dearborn, Michigan

Respondents

Listed in Appendix A

Proceeding under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation
and Liability Act, 42 U.S.C. §§ 9604,
9606(a), 9607 and 9622, as amended and
Section 7003(a) of the Resource
Conservation and Recovery Act, 42 U.S.C.
§ 6973(a).

EPA Docket No. V-W- '07-C-879
CERCLA 106: V-W- '07-C-879
RCRA 7003: R7003-5-07-001

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APPENDIX A - List of Respondents

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("U.S. EPA" or "EPA") and Respondents. This Settlement Agreement provides for the performance of removal and clean-up actions by Respondents in connection with the property located at 3901 Wyoming, Dearborn, Michigan ("Dearborn Refining Company Site" or the "Site.")

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA") and Section 7003(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973(a). These authorities have been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 8-22-A, 8-22-C, 14-14-A, 14-14-C and 14-14-D, and to the Directors, Superfund Division and Lands and Chemicals Division, Region 5, by Regional Delegation Nos. 8-22-A, 8-22-C, 14-14-A, 14-14-C and 14-14-D.

3. U.S. EPA has notified the State of Michigan (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a) and Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

4. U.S. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any fact or any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon U.S. EPA and upon Respondents and their heirs, successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.

6. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondents shall be responsible for noncompliance with this Settlement Agreement as it relates to Work or other requirements imposed on the Respondents.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in RCRA, CERCLA or in regulations promulgated under RCRA or CERCLA shall have the meaning assigned to them in RCRA or CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
- b. "Day" shall mean a calendar day unless expressly stated otherwise.
- c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.
- d. "Interest" shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- e. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- f. "NPOS Respondent" shall mean Parties who are identified in Appendix A and are not the present owner of the Site.
- g. "Parties" shall mean U.S. EPA and Respondents.
- h. "POS Respondent" shall mean the present owner of the Site who is the City of Dearborn.
- i. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).
- j. "Respondents" shall mean those entities identified in Appendix A. The entities listed in Appendix A include the City of Dearborn, the present owner of the Site ("POS

Respondent”, “City of Dearborn” or “City”) and companies which are not the present owners of the Site (“NPOS Respondents”).

k. “Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXVIII). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

l. “Site” shall mean the Dearborn Refining Company Superfund Site, encompassing approximately 6.5 acres, located at 3901 Wyoming in Dearborn, Michigan and depicted generally on the map attached as Appendix B.

m. “State” shall mean the State of Michigan.

n. “U.S. EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

o. “Waste Material” shall mean 1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any “hazardous material” under State law.

p. “Work” shall mean all activities Respondents are required to perform as identified in this Settlement Agreement.

IV. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds, but Respondents do not admit, that:

A. Corporate Information

8. Dearborn Refining Company (“Dearborn Refining Company”, or “DRC”) was incorporated in the State of Michigan on February 26, 1947.

9. On February 4, 1985, a majority of the stocks of Dearborn Refining Company were sold to Mr. Aram Moloian. In addition to acquiring a majority of stocks, Mr. Moloian and members of his family became officers and/or directors of Dearborn Refining Company at that time. They have continued as majority shareholders, officers and/or directors of Dearborn Refining Company.

10. Dearborn Refining Company last filed a Michigan corporate annual report on September 26, 2005.

11. On or about February 13, 2006, Mr. Moloian and Dearborn Refining Company ceased operations at the Site and vacated the property pursuant to a *Stipulation and Order to Vacate Premises* entered into with the City of Dearborn.

12. According to the records of the Michigan Department of Labor and Economic Development Dearborn Refining Company was automatically dissolved on July 15, 2006.

B. Site ownership, characteristics and use

13. The Dearborn Refining Company Site is located at 3901 Wyoming Avenue, Dearborn, Wayne County, Michigan. The Site is presently located on approximately 6.5 acres of land. From 1947 until approximately 2000 the Dearborn Refining Company Site was comprised of approximately 8 acres. From 1947 until approximately November of 2003 the Site owner of record was Dearborn Refining Company.

14. In November of 2003 the City of Dearborn became the owner of the Site through the Wayne County tax-reversion process as a result of Dearborn Refining Company's failure to pay property taxes for the Site.

15. As is customary City protocol concerning tax-reverted properties, the previous property owner, Dearborn Refining Company was provided with the opportunity to redeem the property. The redemption process includes the prior owner submitting to the City a signed "Offer to Purchase." Dearborn Refining Company was aware of the tax reverted status of the property and met with the City in December of 2003 regarding the property and redemption.

16. On March 2, 2004, Mr. Aram Moloian, President of Dearborn Refining Company notified the City of his desire to redeem the Site. The redemption process was delayed by Dearborn Refining Company and Mr. Moloian.

17. Mr. Moloian submitted a signed "Offer to Purchase" on March 28, 2005. The Offer to Purchase was signed by Mr. Moloian on behalf of a different company - Dearborn Refinery, Inc. On July 22, 2005, the City informed Mr. Moloian and Dearborn Refining Company that the Offer to Purchase by Dearborn Refinery Inc. was not acceptable. Further the City informed Mr. Moloian that the Offer to Purchase could only be effected by the prior property owner. The City provided Mr. Moloian with a revised Offer to Purchase and the opportunity to submit it by August 8, 2005. The City did not receive a signed Offer to Purchase from Dearborn Refining Company.

18. The municipal combined sewer system for the City of Dearborn runs along Wyoming Avenue in the area of the Site. Combined sewer catch basins are located along the roadside adjacent to the Site. Storm water runoff may be directed to the Rouge River.

19. Soils at the Site consist of fill from the surface to a depth of 15 to 19 feet below ground surface (bgs). Silty clay with sand lenses are present at 20 feet bgs. Groundwater is located 4 to 7.5 feet bgs at portions of the Site.

C. USEPA, MDEQ and City
Investigative and Enforcement Activities prior to 2006

20. In 1996, the Detroit Water and Sewerage Department (DWSD) issued multiple notices of violation to Dearborn Refining Company for releases of fats, oils and grease (FOG) as well as phenol to the sewer system.

21. In 1999 U.S.EPA issued an information request to Dearborn Refining Company pursuant to section 104(e) of CERCLA, 3007 of RCRA and other statutory authorities.

22. Dearborn Refining Company submitted its response to the 1999 information request. As part of its response Dearborn Refining Company agreed to provide Mr. Aram Moloian for an administrative deposition ("Superfund Administrative Deposition"). That deposition was taken from December 7-9, 1999 in Detroit, Michigan.

23. On various dates in 1999 EPA interviewed former employees and/or managers of Dearborn Refining Company. EPA obtained signed affidavits from them.

24. In 1999 and 2000 U.S. EPA conducted a multi-media compliance inspection and Site sampling at Dearborn Refining Company. As a result of those investigations U.S. EPA found that at least one tank (Tank 1) and one drum on-Site contained polychlorinated biphenyls (PCBs). U.S. EPA also found that at least seven other tanks located on-Site (Tanks 5, 12, 17, 59, 62, 70 and 101) the two sumps and one drum contained hazardous wastes because they had concentrations of total halogens above 1000 parts per million.

25. During the 1999 and 2000 investigations U.S. EPA observed that surface and subsurface soils were stained and saturated with oil. As a result of the Site sampling U.S. EPA determined that the surface and subsurface soils were contaminated with lead, arsenic and PCBs that exceeded Region V's Risk-Based Screening Levels (RBSL) for an Industrial Scenario. The PCBs extended down from the surface to a depth of at least four to eight feet bgs. The arsenic extended down from the surface to a depth of at least four to eight feet bgs. The lead and PCBs in Site soils extended down from three inches to one foot bgs and exceeded MDEQ Part 201 soil cleanup standards for industrial direct contact soils. The lead concentrations from the surface to a depth of 12 feet bgs exceeded the criteria for hazardous waste as set forth in 40 CFR 261. Concentrations of oil and grease in surface and sub-surface Site soils were as high as 39,000 milligram per kilogram (mg/kg).

26. During the 1999 and 2000 investigations U.S. EPA observed that oil was present in the groundwater underlying some portions of the Site. U.S. EPA observed oil and sludge on the building floors and walls. A number of tanks were in poor condition and/or lacked structural

integrity. There was a lack of secondary containment. Access to the Site was unrestricted due to the lack of a perimeter fence.

27. On September 29, 2000, U.S. EPA issued an order to Dearborn Refining Company under Section 7003(a) of RCRA, 42 U.S.C. § 6973(a). At that time EPA ordered Dearborn Refining Company to empty the contents of tanks that were in poor condition, including but not limited to Tanks 1, 2, 5, 12, 17, 59, 60, 62, 70, 75, 76, 80, 81 and 82; decommission the tanks; install four ground water monitoring wells; monitor the groundwater on a quarterly basis for one year and annually thereafter for volatile organic constituents, PCBs, arsenic, lead, chromium, cadmium, barium and listed halogenated spent solvents; repair and, as necessary, install a fence around the perimeter of the Site; submit a work plan detailing Dearborn Refining Company's Site clean-up work; and remove soils with concentrations of lead, arsenic and PCBs above 1000 mg/kg, 2.7 mg/kg and 1 mg/kg, respectively. There were 10 locations ("hot spots") where the lead, arsenic or PCB concentrations exceeded these concentrations in the soils. Dearborn Refining Company has not complied with the RCRA 7003 Order.

28. On or about September 29, 2001 U.S. EPA issued an administrative complaint against Dearborn Refining Company for violations of Section 3008(a) of RCRA, 42 U.S.C. 6928(a). An administrative hearing on the complaint was held in Detroit from January 28, 2003 to February 5, 2003.

29. In 2003 the Michigan Department of Environmental Quality (MDEQ) conducted soil and groundwater sampling at the Site. The MDEQ determined that Site soils from one foot bgs contained concentrations of arsenic, barium, cadmium, copper, lead, mercury, selenium, silver and zinc that exceeded Michigan Part 201 criteria for some or all of the following categories: residential and industrial drinking water protection, groundwater/surface water protection and industrial soil direct contact. The soils also contained concentrations of VOCs that exceeded the Michigan Part 201 criteria for some or all of the following categories: residential and industrial drinking water protection and groundwater/surface water protection. Polynuclear aromatic (PNA) compounds exceeded the Michigan Part 201 criteria for groundwater/surface water protection.

30. In 2003 MDEQ collected groundwater samples at one foot below ground surface from on-Site micro-wells and temporary monitoring wells. The sampling indicated that groundwater contained concentrations of arsenic, barium, cadmium, copper, lead, mercury, selenium, silver and zinc that exceeded the Michigan Part 201 criteria for some or all of the following categories: residential and industrial drinking water protection, groundwater/surface water protection, and industrial soil direct contact. VOC concentrations exceeded the Michigan Part 201 criteria for some or all of the following categories: residential and industrial drinking water protection and groundwater/surface water protection. Polynuclear aromatic hydrocarbon ("PNA") concentrations exceeded the Michigan Part 201 criteria for groundwater/surface water protection.

31. On August 15, 2003, an Initial Decision was issued by Administrative Law Judge Barbara Gunning in response to the administrative complaint filed on September 29, 2001 (Docket No. RCRA-05-2001-0019). Judge Gunning ordered Dearborn Refining Company to install adequate secondary containment; cease using and empty tanks that were in disrepair; dispose of used oil that was mixed with hazardous waste; properly label used oil and hazardous waste tanks and containers; sample all tanks containing used oil prior to off-Site disposal; properly maintain its fire extinguishers; and develop and implement an acceptable contingency plan and used oil analysis plan. Dearborn Refining Company appealed this Initial Decision to U.S. EPA's Environmental Appeals Board.

32. On September 10, 2004, U.S. EPA's Environmental Appeals Board, after briefing and oral argument, issued a Final Order affirming Judge Gunning's Initial Decision.

33. In December of 2004 the State of Michigan filed a misdemeanor complaint against Dearborn Refining Company and Mr. Moloian. The complaint alleged illegal storage or disposal of liquid industrial waste and used oil pursuant to MCL 324.12113 and 324.16704.

34. During the Spring of 2005 the City of Dearborn contacted U.S. EPA to discuss Site conditions and clean-up assistance. U.S. EPA informed the City that it required Site access and cessation of operations prior to conducting clean-up under Superfund.

35. From April 5-7, 2005, U.S. EPA conducted a RCRA inspection to determine Dearborn Refining Company's compliance with the August 15, 2003, Order of Judge Gunning. During that inspection EPA observed breaks in the perimeter fencing and an unlocked gate. There was evidence of animals having been on the Site. There was oil spilling from process piping onto the ground. There were oil sheens in the standing water that was on-Site. The secondary containment was still inadequate in that the floor was not impervious and dikes and berms were either non-existent or discontinuous. There was an acid tank that was visibly leaking its contents onto the ground. There were tanks that were in poor condition, corroded and/or leaking (Tanks 50, 65 and 68). There was an open trench on the west side of the Site filled with oily water. There was a drum labeled ferric chloride that was leaking.

36. On or about May 23, 2005, Dearborn Refining Company and Mr. Moloian entered into a Plea Agreement with the State of Michigan in response to the misdemeanor complaint filed against them. Dearborn Refining Company pled guilty to the misdemeanor charges. The Plea Agreement required Dearborn Refining Company to permanently discontinue receipt of used oil and remove all used oil within 180 days.

37. On September 21, 2005, U.S. EPA issued an updated determination under section 7003(a) of RCRA, 42 U.S.C. 6973(a). It supplemented the 7003 Order issued on September 29, 2000. U.S. EPA added, Mr. Aram Moloian to the September 29, 2000 Order. U.S. EPA also required further soil investigation and remedial measures. The scope of the investigation was to cover those areas adjacent to tanks that were in poor condition or contained hazardous waste. In addition to controlling the sources of groundwater contamination, including the contaminated

subsurface soils, U.S. EPA ordered Mr. Moloian and Dearborn Refining Company to address the contaminated surface soils by either removing the top two feet of certain contaminated soils or installing a cap, over the contaminated surface soils to prevent infiltration, along with a run-on, run-off system designed, installed, operated, and maintained to collect and control at least the water volume resulting from a 24-hour, 25-year storm to prevent erosion and other failure of the cap (see 40 CFR 264 Subparts K and N, and 40 CFR 279.12). U. S. EPA also required additional sampling and statistical analysis to determine whether unacceptable human health risks will remain after the removal of contaminated soils in connection with the closure of Tanks 5, 12, 17, 59, 62, and 70.

38. In September of 2005, the City, U.S. EPA and the State of Michigan discussed Site conditions, the compliance status of Dearborn Refining Company and Mr. Moloian and clean-up options. The City requested U.S. EPA's assistance in cleaning up the Site.

39. On December 12, 2005, the City filed a *Complaint and Notice to Quit* against Dearborn Refining Company.

40. The City and Dearborn Refining Company entered into a *Stipulation and Order to Vacate Premises*. That Stipulation required Dearborn Refining Company to vacate the premises by February 13, 2006. The *Stipulation and Order* was entered on January 31, 2006, by the 19th District Court in Wayne County, Michigan.

41. On January 11, 2006, the City of Dearborn provided U.S. EPA with access to the Site for the purpose of addressing Site contamination. On or about February 16, 2006, U.S. EPA started its on-Site assessment of the hazards presented by the Site under its Superfund authority. The results of the February 16, 2006, Site assessment are presented below.

D. Aram Moloian as Operator

42. During the Superfund Administrative Deposition Mr. Moloian testified that he did everything for Dearborn Refining Company. He was the "engineer, chemist, administrator, president, repairman, the whole thing... test materials that come in, ... schedule everything, inspected everything going out....make....sure ...everything produced correctly and all materials...are checked for their analysis.....waste oil that comes in....I also check that or recheck it....then I do the halogen testing...I'm the chemist,....the engineer, I'm everything".

43. Prior to 1999, when there were plant managers for Dearborn Refining Company Mr. Moloian testified that they reported to him. When there were inspections or governmental parties involved Mr. Moloian was involved. Mr. Moloian controlled the money at Dearborn Refining Company and how it was spent. He would have to approve any expenditure greater than \$1,000 for pollution control equipment.

44. Dearborn Refining Company entered into an Asset Purchase Agreement with Environmental Strategies, Inc. ("ESI") in 1991. Mr. Moloian explained that at the time he

entered into the agreement with ESI no money was exchanged. ESI was to pay him incrementally based on the used oil that it treated. Mr. Moloian stated that he met weekly with ESI to discuss issues related to processing of used oil, customers, regulatory issues, and costs/credits for ESI's treatment on-Site. Mr. Moloian stated that he was not going to relinquish certain customers until after the probation period had been completed. He further stated that he rescinded the Asset Purchase Agreement.

E. Processes and Site Conditions at or around 1985

45. Prior to 1985 Dearborn Refining Company treated used oil using an acid stripping process, in addition to other processes. Some time after 1986 Dearborn Refining Company discontinued its acid stripping process.

46. In 1982 Soil and Materials Engineering, Inc. conducted a hydrogeological study on behalf of Dearborn Refining Company. Findings of this study indicated that groundwater quality was degraded while passing through the Site. Concentrations of lead, oil and grease, total organic hydrocarbons, and chloride in the groundwater exceeded maximum contaminant levels (MCLs) for drinking water.

47. In 1999 EPA interviewed Gregory Yates, Raymond Woodman, Tony Junga and Richard Duncan, former employees of Dearborn Refining Company.

48. Mr. Yates was an executive vice-president of Dearborn Refining Company from approximately October 1989 to November 1991. Mr. Yates informed EPA in a sworn affidavit that in 1989 there was ground contamination with oil that was sticky. He also indicated that between 1989 and 1991 there had been a major spill from Tank 75. Mr. Yates indicated that to his knowledge, from 1985 to 1991 Dearborn Refining Company did not clean-up spills that occurred at the Site except for clay and sludge that had been placed on the ground in the acid stripping area of the facility.

49. Mr. Woodman was Technical Director of Dearborn Refining Company from 1978 to 1985. Mr. Woodman informed EPA in a sworn affidavit that until the early 1980's Dearborn Refining Company would shut down annually. As part of this shut down Dearborn Refining Company would clean-up and maintain the property. Mr. Woodman stated that by 1983 the soils were stained and the annual clean-ups had stopped. He stated that by 1985 the facility was deteriorating.

50. Mr. Duncan worked for Dearborn Refining Company from 1979 to 1985. Mr. Duncan informed EPA in a sworn affidavit that during his tenure at Dearborn Refining Company the ground was sloppy and muddy with oil. Mr. Duncan stated that by 1986 or 1987 the facility looked like a junkyard - wooden pallets and drums along the road.

51. In 1987 Versar conducted a study of the Site conditions on behalf of Dearborn Refining Company.

F. Waste disposal and removal activities on-Site

52. In his Superfund Administrative Deposition Mr. Moloian stated that since 1985 Dearborn Refining Company removed soils in some areas of the facility and not removed soils in other areas. He stated that in certain areas of the facility, for example the area by the pug mill, one of his managers excavated a hole and placed dirt into it. In 1989 Dearborn Refining Company removed the underground piping and replaced it with above ground hoses.

53. In his Superfund Administrative Deposition Mr. Moloian stated that Dearborn Refining Company removed the large dirt pile left by ESI and other areas of soil contamination left by ESI. Mr. Moloian further stated that drums ESI left on-Site were shipped off-Site by June 4, 1993.

G. Generators

54. In 2006 U. S. EPA acquired copies of manifests of shipments of wastes and/or liquids from generators to Dearborn Refining Company. EPA developed a volumetric data base of companies sending wastes and/or liquids to Dearborn Refining Company based on the information contained in these manifests. Except for the City of Dearborn, the Respondents listed in Appendix A are companies with manifests acquired from the Site.

55. The information on the manifests varied. In some instances the generator identified wastes with either a RCRA hazardous waste code or a State of Michigan Liquid Industrial Waste Code. In other instances the generator did not use a waste code. The description of the wastes indicated liquids or other wastes containing oil or used oil.

56. Various EPA studies have identified metals (lead, arsenic, chromium, cadmium, and zinc), halogenated hazardous constituents, PNAs, and volatile organic compounds "VOCs" (e.g., toluene, xylene, benzene) as hazardous constituents typically found in used oils.

H. Site Assessment Results 2006

57. On February 16, 2006, U.S. EPA initiated Site assessment activities under CERCLA. At that time U. S. EPA identified over 94 aboveground storage tanks ("tanks" or "AST") and five buildings on-Site. The buildings included an office, laboratory, water treatment building, boiler house, boiler rooms and pump house scattered throughout the Site. At that time EPA conducted a Site assessment. EPA's observations are presented in the following paragraphs of this section.

58. EPA observed an estimated 700,000 gallons of oil and 40,000 gallons of CERCLA hazardous substances that were abandoned along with contaminated soils, subsurface soils and groundwater. There were numerous above ground storage tanks and poly drums, small chemical containers, scrap metal, old cars, tires and debris piles throughout the Site. The Site perimeter fencing was intermittent.

59. There was deep standing water in areas that made access to the tanks not possible. Some tanks, tank access-ways, support structures and other facility structures were dilapidated and not structurally sound.

60. U.S. EPA observed oily sheens and oil layers on standing water, stained soils and tanks with visible over-run scars indicating that spills and releases were occurring and/or occurred in the past. EPA observed tanks actively leaking.

61. The Office Building contained approximately 82 small chemical product and waste containers (70 gallons total) and one compressed air cylinder. The Boiler House and Press Room contained 72 small, chemical product and waste containers (less than 500 gallons total), one acetylene gas cylinder and one 2,200 gallon vat that is half filled with oil and sludge.

62. The Laboratory contained 717 small, chemical product and waste containers that ranged in size from one pint to 2.5 gallons and additional 20-pound bags of sodium hydroxide and a 50-pound bag of disodium trioxosilicate (pentahydrate). Oil, oil additives for foam control and heat resistance, calibration standards, acids and bases are some of the chemicals that were stored in the Laboratory.

63. The Blending Room contained 111 chemical product and waste containers that ranged in size from 0.5 gallons to 55 gallons. Oil, oil additives for foam control and heat resistance, grease, detergent, hexalene glycol, triazole, acids, and bases are some of the chemicals that were stored in the Blending Room.

64. The Water Treatment Building contained a total of approximately 166 chemical product and waste containers that ranged in size from 200 milliliters (ml) to 15 gallons. This included 50-pound bags of clay and diatomite. Acids, calcium carbonate and potassium ferrocyanide crystals were among the chemicals stored in the water treatment building.

65. The Site yard was inspected. At that time the chain-link fence was intermittent and of variable heights; in some places it was as short as 4-feet tall. Debris, scrap metal, wood, old tires, empty drums, tanks and totes were ubiquitously scattered about the yard. Approximately 280 empty steel and poly drums were scattered throughout the property. Stained soils and evidence of oil or chemical spills were pervasive throughout the Site. Many of the secondary containment structures were missing, flooded, cracked, compromised or otherwise insufficient. There was standing water with a significant oil component covering a large portion of the northwest tank farm and the areas near sumps 1 and 2.

66. The yard contained approximately 213 55-gallon drums containing oil, lubricants, oil additives, acids, caustics, flammables and wastewater. There were ninety-four tanks. At that time it was estimated that 75 of the tanks contained oil or oily sludges; 14 of the tanks contained PCB oil, acid or waste oil that contained hazardous substances or were considered RCRA hazardous wastes. There were approximately 87 other containers with acids, bases, oils,

wastewater, and metallic powder on-Site, including totes, 5-gallon buckets, a roll-off box and small vessels.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, U.S. EPA has determined, but Respondents do not admit, that:

67. The Dearborn Refining Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

68. Oils, oily wastes, sludges, used oil, acids, bases, caustics, lab chemicals, oil additives, soils stained and/or contaminated with oil and other constituents, as found at the Site and summarized in the Findings of Fact are "solid waste" as defined by Section 1004(27) of RCRA, 42 U.S.C. §6903(27). Soils contaminated with lead above the TCLP concentration levels specified in 40 C.F.R. §261 and tanks and soils with total halogen concentrations greater than 1000 parts per million are solid wastes which are also "hazardous waste" as defined in Section 1004(5) of RCRA, 42 U.S.C. §6903(5).

69. PCBs, lead, arsenic, total halogens, benzene and RCRA corrosive wastes are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

70. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21) and Section 1004(15) of RCRA, 42 U.S.C. §6903(15).

71. Respondents were either persons who are the present owner of the Site; persons who at the time of disposal of any hazardous substances owned or operated the Site; or persons who arranged for disposal or transport for disposal of hazardous substances at the Site. Respondents are therefore potentially responsible persons under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

72. Respondents are either persons who are the present owner of the Site or persons who contributed to or are contributing to the handling, storage, transportation or disposal of solid wastes or hazardous wastes at the Site by arranging for the handling, storage, treatment, transportation or disposal of their wastes or liquids at the Site. Respondents are therefore liable persons under Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

73. The conditions described in the Findings of Fact above constitute an actual or threatened "release" into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§9601(8) and (22).

74. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR Part 300. The

conditions also present an imminent and substantial endangerment to human health and/or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a). These factors and conditions include, but are not limited to, the facts identified in the following paragraphs.

75. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants. This factor is present at the Site due to the past condition of the Site fencing and the findings of the 2006 Site Assessment. At various times EPA has observed evidence of the existence of dogs and pheasants on-Site. During the 2006 Site Assessment EPA observed that the drums, piping and the tanks were generally rusted and corroded and, in many cases, the contents were open to the elements. Leaking tanks and evidence of historic spills were evident on Site. Human and animal populations accessing the Site could contact contaminated soil or hazardous container contents. The tanks are in an advanced state of corrosion and disrepair and did not have locks or secondary containment. Continued weathering will cause the tanks to fail. The Site contains drums, totes and above ground storage tanks (ASTs) of acids (with pH as high as 13 and as low as 1), toxics (failing the TCLP for lead, benzene, mercury and chromium) and flammable wastes (flash point as low as -40 degree Fahrenheit). A release from the facility could impact residences and businesses in the area. During the oil removal phase of work which occurred in 2006 the United States Coast Guard saved two birds that became contaminated when they entered the Site.

76. The potential contamination of drinking water supplies or sensitive ecosystems. This factor is present at the Site due to the existence of waste oil, oily sludge, hazardous waste and PCB-contaminated oil and hazardous wastes at the Site in dilapidated and corroded tanks and drums. The contamination of the ground water with metals (e.g., arsenic, barium, cadmium, copper, lead, mercury, selenium, silver and zinc), VOCs and PNAs above Michigan Act 201 concentrations for residential and/or /industrial drinking water and ground water/surface water. Additionally, the municipal combined sewer system, and associated catch basins run along Wyoming Avenue in the area of the Site. During wet weather, combined sewer overflows are known to occur in the area of the Site and a release from the Site may be funneled into the combined sewer, transported to Baby Creek and discharged into the Rouge River.

77. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release. This factor was present at the Site during the Site Assessment due to the existence of more than one million combined gallons of waste oil, oily sludge, oily wastewater, and hazardous waste and 65 55-gallon drums of PCB-contaminated oil and hazardous wastes stored on-Site in corroded tanks and drums which could release these contaminants. The presence of oil on standing water, stained soils, and tanks with visible over-run scars indicated that spills and releases occurred and would continue to occur unless removed. Active leaking had been documented. EPA has removed more than 600,000 gallons of oil, oily sludge and oily wastewater since July of 2006. There still remains approximately 40,000 gallons of hazardous substances and solid waste in ASTs, 250 drums, 50 totes several hundred small containers and a laboratory.

78. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate. This factor is present. Previous investigations at the Site by the EPA (2000) and MDEQ (2003) have indicated that there were numerous spills of oil or oily wastewater on-Site that have impacted Site soils. Leaking hoses and valves and holes in tank walls have caused tank contents to spill onto staging pads and Site soils. In addition, at least seven tanks have been known to contain hazardous waste or PCBs at some time in the past. Based on results of previous investigations at the Site there is a potential for the presence of an imminent threat to human health and the environment on Site due to uncontrolled hazardous wastes and soils. Historic Site documentation indicates that contaminant concentrations in surface and subsurface Site soils exceed regulatory and health-based criteria for human and environmental protection. The following concentrations exceed Michigan or federal regulatory or health-based criteria:

-Concentrations of PCBs as high as 70 mg/kg, arsenic as high as 3.9 mg/kg and lead as high as 4,100 gm/kg; and

-Concentrations of TCLP lead as high as 7 mg/L at 4-8 feet below ground surface exceeded the criteria for hazardous waste as set forth in 40 CFR Part 261.

In addition, concentrations of oil and grease were as high as 39,000 mg/kg and total halogen concentrations were as high as 1,200 mg/kg near Site surface soils.

79. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released. This factor is present at the Site due to the existence of contaminants at or near the surface. Normal weather, rain and snow melt will continue to cause spills and releases of oil and hazardous waste. The Site was abandoned, and the wastewater/rainwater control systems were no longer operational and may not have been for some time. Three days after the Site was abandoned ponded water with visible oil on the surface was identified in several locations on Site.

80. Threat of fire or explosion. This factor is present at the Site due to the existence of more than a million gallons of oil and hazardous waste being abandoned and unsecured. Flammable materials, laboratory chemicals, dry wood, debris, and trash were stockpiled on Site. A large fire could endanger employees of nearby business, residential areas which are as close as 0.25 miles from the Site and emergency responders. Fire run-off could migrate to the Rouge River.

81. The actual or threatened release of hazardous substances, pollutants or contaminants from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a) and Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

82. The actions required by this Settlement Agreement are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this

Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, none of which is admitted by Respondents, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

83. Respondents shall retain one or more contractors to perform the Work and shall notify U.S. EPA of the name(s) and qualifications of such contractor(s) within 3 business days of the Effective Date this Settlement Agreement. Respondents shall also notify U.S. EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 5 business days prior to commencement of such Work. U.S. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If U.S. EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval. The proposed contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared consistent with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by U.S. EPA.

84. Within 3 business days after the Effective Date of this Settlement Agreement, NPOS Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by NPOS Respondents required by this Settlement Agreement and shall submit to U.S. EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. U.S. EPA retains the right to disapprove of the designated Project Coordinator. If U.S. EPA disapproves of the designated Project Coordinator, NPOS Respondents shall retain a different Project Coordinator and shall notify U.S. EPA of that person's name, address, telephone number, and qualifications within 4 business days following U.S. EPA's disapproval. Receipt by NPOS Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement shall constitute receipt by all NPOS Respondents.

85. U.S. EPA has designated Brian Kelly of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC") and Project Coordinator and Christopher Black as the

RCRA Coordinator. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the OSC at 9311 Groh Road, Grosse Isle, Michigan 48138 and the RCRA Coordinator at USEPA, Region 5, Land and Chemicals Division, 77 West Jackson, Chicago, Illinois 60604. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

86. The City of Dearborn has designated Amina El-Husseini as its Project Coordinator for contacts with U.S. EPA. All submissions shall be directed to Ms. El-Husseini at the City of Dearborn's Economic and Community Development Department, 13615 Michigan Avenue, Dearborn, Michigan 48126. Telephone number (313) 943-2180 (x5). All other contacts with the City of Dearborn should be directed to Licia Yangouyian. Ms. Yangouyian's address is the City of Dearborn, Office of Corporation Counsel, attention: Licia Yangouyian, 13615 Michigan Avenue, Dearborn, Michigan 48126. Telephone number (313) 943-2035; fax number (313) 943-2469.

87. U.S. EPA and Respondents shall have the right, subject to Paragraphs 84, to change their respective designated OSC or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED BY NPOS RESPONDENTS

88. NPOS Respondents shall perform, at a minimum, the following response activities:
 - A. Develop, submit and implement a Health and Safety Plan and Site Security Plan as required by paragraph 90 below.
 - B. Provide Site security within 3 business days of the effective date of this Settlement Agreement and continue security until the containerized waste is removed.
 - C. Perform ambient air monitoring during on-Site activities.
 - D. Characterize, remove and properly dispose of containerized hazardous substances and wastes (e.g., drums, tanks, laboratory wastes, vac boxes, frac tanks and small containers) at the Site. Investigate contaminated soils in accordance with paragraph "F" below. If contaminated soil removal is selected pursuant to paragraph F, then characterize, remove and properly dispose of those soils selected for removal. The off-Site disposal of all hazardous substances, wastes, contaminated soils and/or debris shall be consistent with U.S. EPA's Off-Site Rule (40 C.F.R. § 300.440).

- E. Decommission and remove all above ground storage tanks (ASTs) outside of buildings, prior to implementation of Site Investigation (see paragraph F below).
- F. Develop, submit, and implement a Site Investigation Plan to investigate the nature and extent of contamination in Site soils and monitor groundwater. NPOS Respondents shall assess all relevant exposure pathways in accordance with Michigan Act 451, Part 201 criteria (Part 201) for industrial sites. As approved by the OSC, Respondents shall be responsible to undertake combinations of the following potential removal action components with respect to the Site:

“hot spot” removal;

contaminated soil removal;

physical containment (e.g., asphalt cap, soil cover, etc.);

free product containment or removal (e.g., LNAPL collection);

groundwater monitoring;

deed restriction recommendations; and

operation and maintenance.

Respondents shall evaluate removal action options for protection of human health, welfare, and the environment, technical and cost effectiveness, compliance with Part 201 industrial criteria, and the continued industrial use of the Site. Respondents shall recommend a preferred removal action option to the U.S. EPA for review and approval that meets the requirements of this paragraph. Respondents shall implement the U.S. EPA approved removal action option in accordance with the following phases of work:

Phase I: Removal Action Design, and

Phase II: Removal Action Implementation.

89. Work Plan and Implementation.

- a. Within 3 business days after the Effective Date of this Settlement Agreement, NPOS Respondents shall submit to U.S. EPA for approval a draft Work Plan, which will include

an investigation phase and a removal phase, for performing the actions required of them as described in Paragraph 88 above. It will also include a schedule for the development and submission of an Investigation Report which is described below. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement. NPOS Respondents shall also provide a copy of the Work Plan and the Investigation Report to the City of Dearborn. The City of Dearborn will submit any comments on the NPOS Work Plan and Investigation Report to the NPOS Respondents and U.S. EPA within 10 business days of their receipt of the document.

b. The Investigation Report shall include a schedule for the NPOS Respondents' submission of its recommendations for removal options and physical and administrative controls on the use of the Site consistent with paragraph 88 F. The NPOS Respondents shall consult with the City of Dearborn prior to submitting its recommendations. The recommendations shall be consistent with the future industrial use of the property; protective of the Work, human health, welfare, and the environment; and consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02 (post-removal site control requirements).

c. Within 10 business days after U.S. EPA's approval or modification of the removal options recommended in the Investigative Report, NPOS Respondents shall submit to U.S. EPA for approval a draft Removal Work Plan for performing the U.S. EPA selected removal actions. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement. NPOS Respondents shall also provide a copy of the Removal Work Plan to the City of Dearborn. The City of Dearborn will submit any comments on the NPOS Removal Work Plan to the NPOS Respondents and U.S. EPA within 10 business days of their receipt of the document.

d U.S. EPA may approve, approve with modification, disapprove, require revisions to, or modify in whole or in part any of the deliverables required by this paragraph 89 . If U.S. EPA requires revisions, NPOS Respondents shall submit a revised deliverable within 7 business days of receipt of U.S. EPA's notification of the required revisions. NPOS Respondents shall implement the deliverable as approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the revised deliverable, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

e. NPOS Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. NPOS Respondents shall not commence implementation of any Work developed hereunder until receiving written U.S. EPA approval or modification pursuant to Paragraph 89(d).

90. Health and Safety Plan. Within 3 business days after the Effective Date, NPOS Respondents shall submit for U.S. EPA review and comment a plan that ensures the

protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared consistent with U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If U.S. EPA determines that it is appropriate, the plan shall also include contingency planning. NPOS Respondents shall incorporate all changes to the plan recommended by U.S. EPA and shall implement the plan during the pendency of the removal action.

91. Quality Assurance and Sampling.

- a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. NPOS Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate U.S. EPA guidance. NPOS Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. NPOS Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation, as determined and approved by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.
- b. Upon request by U.S. EPA, NPOS Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for QA monitoring. NPOS Respondents shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.
- c. Upon request by U.S. EPA, NPOS Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples. NPOS Respondents shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity, unless shorter notice is agreed to by U.S. EPA. Where practicable, U.S. EPA will provide notice to Respondents at least one business day in advance of U.S. EPA sampling. However, U.S. EPA retains its authority to sample without notice when it deems necessary. U.S. EPA shall have the right to take any additional samples that U.S. EPA deems necessary. Upon request, U.S. EPA shall allow NPOS Respondents to take split or duplicate samples of any samples it takes as part of its oversight of NPOS Respondents' implementation of the Work. If requested, the Parties agree to provide each other with the validated analytical results of Site-related samples that they collect.

92. Reporting.

a. NPOS Respondents shall submit written progress reports to U.S. EPA concerning actions undertaken pursuant to this Settlement Agreement on the 10th business day of each month after the date of receipt of U.S. EPA's approval of the Work Plan identified in paragraph 89(a) above until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. NPOS Respondents shall submit 3 copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. NPOS Respondents shall submit 2 copies to U.S. EPA and 1 copy to the City of Dearborn. Upon request by U.S. EPA, NPOS Respondents shall submit such documents in electronic form.

93. Off-Site Shipments.

a. NPOS Respondents shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. NPOS Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. NPOS Respondents shall notify the State in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and State will be determined by NPOS Respondents following the award of the contract for the removal action. NPOS Respondents shall provide the information required by Paragraphs 93(a) and 93(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, NPOS Respondents shall obtain U.S. EPA's certification

that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. NPOS Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence. To the extent practicable, the OSC will assist the NPOS Respondents in identifying disposal facilities which have obtained CERCLA approval in accordance with U.S. EPA's Off-Site Rule.

94. Final Report.

Within 60 calendar days after completion of all Work required by Section VIII of this Settlement Agreement, NPOS Respondents shall submit for U.S. EPA review a Final Report summarizing the actions they have taken to comply with their responsibilities under this Settlement Agreement. The Final Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and with the guidance set forth in "Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The Final Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The Final Report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

95. Post-Removal Site Control

NPOS Respondents' work related to post-removal site control is incorporated into 89(b) above.

IX. WORK TO BE PERFORMED BY CITY OF DEARBORN

96. The City of Dearborn shall perform the following actions:

- a. Perform an asbestos survey.
- b. Maintain site fencing such that it surrounds the site and prevents unauthorized

- access by humans or animals.
- c. Completely shut-off gas and utility services.
- e. Limit the use of and record and maintain deed restrictions on Site consistent with the hazards posed by the contamination remaining at the Site; the industrial use and zoning of the Site; the Work completed at the Site; and the final cleanup approved by U.S. EPA. The City of Dearborn shall also maintain and operate any controls on the use of the property which U.S. EPA may require as part of the approved clean-up for the Site (hereinafter referred to as "institutional controls").

97. Work Implementation.

The City of Dearborn shall not conduct any Work except in conformance with the terms of this Settlement Agreement. The City of Dearborn will submit any comments on the NPOS Work Plans and Reports identified in paragraph 89 and 94 above to the NPOS Respondents and U.S. EPA within 10 business days of their receipt of the document.

98. Property Use Restrictions.

The zoning for the site is presently industrial. The City of Dearborn as the present owner for the Site is the only entity which may seek a zoning change. The City of Dearborn agrees as the property owner not to seek a zoning change without U.S. EPA involvement and approval. The City agrees that it will limit the use of the Site consistent with the Work required and approved by U.S. EPA. The City agrees that it will allow and maintain any institutional controls approved by U.S. EPA for the Site.

U.S. EPA will provide the City with a copy of the Final Report referred to in paragraph 94. Within 30 days of the City's receipt of the Final Report the City of Dearborn will propose to U.S. EPA the final deed restrictions on the Site consistent with paragraph 96(e) above. The City of Dearborn agrees to record the deed restrictions with the Wayne County Register of Deeds within 30 days of U.S. EPA's approval of the deed restrictions.

99. Conveyance of the Property.

The City of Dearborn, at least 30 days prior to the conveyance of any interest in real property at the Site, shall give written notice to the transferee that the property is subject to this Settlement Agreement and shall give written notice to U.S. EPA and MDEQ of the proposed conveyance, including the name and address of the transferee. The City of Dearborn also agrees to require their successors in interest to the Site to comply with the deed restrictions and institutional controls required by U.S. EPA for this Site and to comply with Sections X (Site Access) and XI (Access to Information).

X. SITE ACCESS

100. The City of Dearborn, commencing on the Effective Date of this Settlement Agreement, shall provide U.S. EPA, the Michigan Department of Environmental Quality (MDEQ), and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.
101. NPOS Respondents shall use their best efforts to obtain all necessary access agreements within 3 business days after the Effective Date of this Settlement Agreement, or as otherwise specified in writing by the OSC. NPOS Respondents shall immediately notify U.S. EPA if, after using their best efforts, they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. NPOS Respondents shall describe in writing their efforts to obtain access. If the NPOS Respondents have been unsuccessful in obtaining access agreements after using best efforts U.S. EPA may assist the NPOS Respondents in obtaining access, perform the tasks or activities required by this Settlement Agreement with U.S. EPA contractors, or terminate this Settlement Agreement. If U.S. EPA performs tasks or activities with U.S. EPA contractors and does not terminate the Settlement Agreement, Respondents shall perform all other activities not requiring access. Respondents shall integrate the results of such tasks undertaken by U.S. EPA into its reports and deliverables.
102. Notwithstanding any provision of this Settlement Agreement, U.S. EPA and the MDEQ retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. ACCESS TO INFORMATION

103. Except as provided in Paragraphs 104 and 105, Respondents shall provide to U.S. EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to the performance of Work under this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to U.S. EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.
104. Respondents may assert confidentiality claims covering part or all of the documents or information submitted to U.S. EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2,

Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA, or if U.S. EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

105. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.
106. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XII. RECORD RETENTION

107. Until 6 years after Respondents' receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 6 years after Respondents' receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.
108. At any time prior to the conclusion of this document retention period, upon request by U.S. EPA, Respondents shall deliver any such records or documents to U.S. EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a

description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

109. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by U.S. EPA or the State or the filing of suit against it regarding the Site and that it has fully complied and will fully comply with any and all U.S. EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIII. COMPLIANCE WITH OTHER LAWS

110. Respondents shall perform all actions they are required to perform pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondents shall identify ARARs in the Work Plans subject to U.S. EPA approval.

XIV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

111. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and U.S. EPA takes such action instead, Respondents shall reimburse U.S. EPA all costs of the response action not inconsistent with the NCP.
112. In addition, in the event of a previously unknown release of a hazardous substance from the Site, Respondents shall immediately notify the OSC at (734) 740-9019, if unavailable

then the OSC Duty Officer at (312) 353-2318. If the release is above the CERCLA reportable quantity for that hazardous substance then the Respondents shall also notify the National Response Center at (800) 424-8802. Respondents shall submit a written report to U.S. EPA within 7 business days after each release covered by this paragraph, setting forth the events that occurred and the measures taken or to be taken to mitigate such release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XV. AUTHORITY OF ON-SCENE COORDINATOR

113. The OSC shall be responsible for overseeing Respondents' implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XVI. DISPUTE RESOLUTION

114. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.
115. If Respondents object to any U.S. EPA action taken pursuant to this Settlement Agreement, they shall notify U.S. EPA in writing of their objection(s) within 10 calendar days of such action, unless the objection(s) has/have been resolved informally. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, a schedule for completion of the disputed and related Work and all supporting documentation on which such party relies. U.S. EPA shall provide its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. The time periods for exchange of written documents may be extended upon agreement of the Parties or at the sole discretion of U.S. EPA.
116. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph. Upon review of the

administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement and shall establish the schedule for completion of the disputed and related Work..

117. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached by the Parties to the dispute or with the decision of the Director of the Superfund Division, whichever occurs.

XVII. FORCE MAJEURE

118. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*.
119. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.
120. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify U.S. EPA orally within 48 hours of when Respondents first knew that the event might cause a delay. Within 7 calendar days of providing U.S. EPA with such verbal notification, Respondents shall provide to U.S. EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall be grounds for U.S. EPA to deny Respondents an extension of time for performance.
121. Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.
122. If U.S. EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that

are affected by the *force majeure* event will be extended by U.S. EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, U.S. EPA will notify Respondents in writing of its decision. If U.S. EPA agrees that the delay is attributable to a *force majeure* event, U.S. EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

123. Respondents shall be liable to U.S. EPA for stipulated penalties in the amounts set forth in Paragraphs 124 and 125 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any work plan or other plan or report approved under this Settlement Agreement identified below in accordance with all applicable requirements of this Settlement Agreement within the specified time schedules established by and approved under this Settlement Agreement.

124. Stipulated Penalty Amounts - Work.

a. NPOS Respondents

The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 124(b):

<u>Penalty Per Violation Per Day for Non-Compliance By NPOS Respondents</u>	<u>Period of Noncompliance</u>
\$500.00	1st through 14th day
\$1,000.00	15th through 30th day
\$1,500.00	31st day and beyond

b. NPOS Compliance Milestones

1. Submission of the Health and Safety Plan in accordance with paragraph 90
2. Submission of the Work Plan, Investigative Report or Removal Work Plan in accordance with paragraph 89.
3. Failure to complete identified actions in accordance with the schedule approved in the Work Plan and Removal Work Plan.

c. City of Dearborn

The following stipulated penalties shall accrue per violation per day for non-compliance with Sections IX and X:

<u>Penalty Per Violation Per Day for Non-Compliance By City of Dearborn</u>	<u>Period of Noncompliance</u>
\$100.00	1st through 14th day
\$200.00	15th through 30th day
\$400.00	31st day and beyond

125. Stipulated Penalty Amounts - NPOS Reports.

The following stipulated penalties shall accrue per violation per day for failure to comply with other requirements of this Settlement Agreement:

<u>Penalty Per Violation Per Day of Non- Compliance</u>	<u>Period of Noncompliance</u>
\$100.00	1st through 14th day
\$200.00	15th through 30th day
\$400.00	31st day and beyond

126. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Sections VIII or IX (Work to be Performed), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the Director of the Superfund Division, Region 5, under Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after U.S. EPA submits its written statement of position until the date that the Director of the Superfund Division issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement but an act or omission shall not be the basis for more than one claimed violation or the accrual of more than one stipulated penalty.

127. Following U.S. EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, U.S. EPA may give Respondents written notification

of the failure and describe the noncompliance. U.S. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether U.S. EPA has notified Respondents of a violation.

128. All penalties accruing under this Section shall be due and payable to U.S. EPA within 30 days of Respondents' receipt from U.S. EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures of Section XVI (Dispute Resolution). All payments to U.S. EPA under this Section shall be paid by certified or cashier's check(s) made payable to "U.S. EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Program Accounting & Analysis Section, P.O. Box 70753, Chicago, Illinois 60673, shall indicate that the payment is for stipulated penalties, and shall reference the U.S. EPA Site/Spill ID Number B5E7, the U.S. EPA Docket Number, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the OSC and RCRA Coordinator at the address identified in Paragraph 85. A copy shall also be sent to Richard J. Clarizio, Associate Regional Counsel, U.S. EPA, Region 5, Office of Regional Counsel, (C-14J), 77 West Jackson, Chicago, Illinois 60604.

129. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement Agreement.

130. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 20 days after the dispute is resolved by agreement or by receipt of U.S. EPA's decision. If Respondents prevail in a timely filed dispute they shall not be liable for stipulated penalties related to their successful dispute.

131. If Respondents fail to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 127. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l); Section 3008 and 7003 of RCRA 42 U.S.C. §§ 6928 and 6973; and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that U.S. EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA; Section 3008 or 7003 of RCRA, 42 U.S.C. §§ 6928 and 6973; or punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement. Should Respondents violate this Settlement Agreement or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606 and Section 7003 of RCRA, 42 U.S.C. § 6973. Notwithstanding any other provision of this Section, U.S. EPA may, in its

unreviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY U.S. EPA

132. In consideration of the actions that will be performed by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, U.S. EPA covenants not to sue or to take administrative action against Respondents and their officials, agents, contractors, subcontractors, employees, representatives, parents, subsidiaries, successors, predecessors and affiliates pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and section 7003 of RCRA, 42 U.S.C. §6973 for the Work. This covenant not to sue shall take effect upon and is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement Agreement.

XX. RESERVATIONS OF RIGHTS BY U.S. EPA

133. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

134. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. U.S. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred at the Site;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

135. This Settlement Agreement is not intended to be nor shall it be construed to be a permit. Respondents acknowledge and agree that U.S. EPA's approval of the Work and/or Work Plans does not constitute a warranty or representation that the Work and/or Work Plans will achieve the required clean-up or performance standards. Compliance by Respondents with the terms of this Settlement Agreement shall not relieve Respondents of their obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

136. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Michigan Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 137 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 133 (b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

137. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d). Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of

hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

a. the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of i) 0.002% of the total volume of waste at the Site, or ii) 110 gallons of liquid materials or 200 pounds of solid materials.

b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if U.S. EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against such Respondent.

c. Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person that has entered into a final *de minimis* settlement under Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), with U.S. EPA with respect to the Site as of the Effective Date of this Settlement Agreement. This waiver shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against such Respondent.

XXII. OTHER CLAIMS

138. By issuance of this Settlement Agreement, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or U.S. EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

139. Except as expressly provided in Section XIX, (Covenant Not to Sue by U.S. EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action by U.S. EPA against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, RCRA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

140. No action or decision by U.S. EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

141. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work as follows:
1. with respect to the NPOS Respondents it is the Work as identified in section VIII; and
 2. with respect to the City of Dearborn it is the Work as identified in section IX.
- b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Respondents have, as of the Effective Date of this Settlement Agreement, resolved their liability to the United States for the Work at this Site.
- c. Except as provided in Sections XIX and XXI of this Settlement Agreement nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Section 113(f)(2) and (3), 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain response costs or response action, and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

XXIV. INDEMNIFICATION

142. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action that arise from negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all reasonable costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, to the extent they arise from claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of

Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States. The Federal Tort Claims Act (28 U.S.C. §§ 2671, 2680) provides coverage for injury or loss of property, or injury or death caused by the negligent or wrongful act or omission of an employee of U.S. EPA while acting within the scope of his or her employment, under circumstances where U.S. EPA, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

143. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

144. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. MODIFICATIONS

145. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by U.S. EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

146. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 145.

147. No informal advice, guidance, suggestion, or comment by the OSC or other U.S. EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVI. NOTICE OF COMPLETION OF WORK

148. Within thirty (30) calendar days of receipt of NPOS Respondents' Final Report

pursuant to paragraph 94, U.S. EPA will determine whether the NPOS Respondents' Work has been completed in accordance with this Settlement Agreement. U.S. EPA shall provide NPOS Respondents with written notice of its determination, including, but not limited to providing a list of any deficiencies which need to be corrected in order for the Work to be properly completed under this Settlement Agreement. In the event of such notice of deficiencies NPOS Respondents will modify the Removal Work Plan, if appropriate, in order to correct such deficiencies. NPOS Respondents shall implement the modified and approved Removal Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure by NPOS Respondents to implement the approved modified Removal Work Plan shall be a violation of this Settlement Agreement.

XXVII. INSURANCE

153. At least 7 days prior to commencing any on-Site Work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of their Work under this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of 2,000,000 million dollars, combined single limit. Within the same time period, Respondents shall provide U.S. EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of their Work under this Settlement Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to U.S. EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVIII. SEVERABILITY/INTEGRATION/APPENDICES

154. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondents have sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondents shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

155. This Settlement Agreement and its attachments constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following attachments are incorporated into this Settlement Agreement:

Appendix A - List of Signators

Appendix B - Site Map

XXIX. PUBLIC COMMENT

156. Pursuant to Section 7003(d) of RCRA, 42 U.S.C. §6973(d) U.S. EPA shall provide public notice and the opportunity for a public meeting and a reasonable opportunity for public comment on this Settlement Agreement. U.S. EPA shall provide a thirty (30) day public comment period. After consideration of any comments submitted during the public comment period U.S. EPA may sign this Settlement Agreement, it may withhold consent or it may seek to amend all or part of this Settlement Agreement if U.S. EPA determines that the comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XXX. EFFECTIVE DATE

157. This Settlement Agreement shall be effective after completion of the public comment period identified in paragraph 156 and upon receipt by Respondents of a copy of this Settlement Agreement signed by the Directors, Superfund Division and Land and Chemicals Division, U.S. EPA Region 5. The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party they represent to this document.

Agreed this 13th day of July, 2007.

For Respondent

By Licia A. Yampuyan Luna Alfanzugan

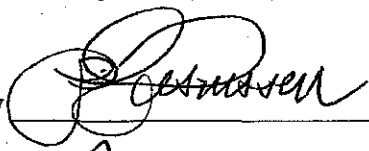
Title Assistant Corporation Counsel

Per CR 7-490-07

Agreed this 9TH day of July, 2007.

For Respondent

ACEMCO INCORPORATED

By 

Title PRESIDENT

Agreed this 9th day of July, 2007.

For Respondent J. Vico Aureus Holdings, Ltd
John Vico

By Vice-President

Title _____

Agreed this 11~~th~~ day of July, 2007.

For Respondent Comprehensive Environmental Solutions Inc.

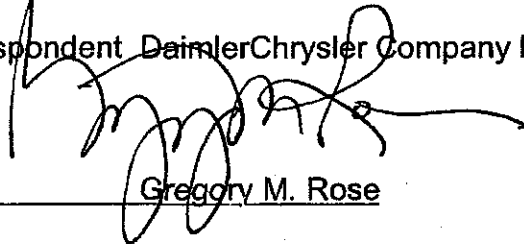
By James M. Bogg

Title Resident

Agreed this 2nd day of July, 2007.

For Respondent ~~Daimler~~Chrysler Company LLC

By

A handwritten signature in black ink, appearing to read 'Gregory M. Rose', is written over a horizontal line.

Gregory M. Rose

Title Sr. Manager Environmental Risk Management

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In re: Dearborn Refining Company
3901 Wyoming
Dearborn, Michigan,
CERCLA 106(a)
RCRA 7003(a)

Agreed this 5th day of JULY, 2007.

For Respondent Eaton Corporation

By Earl R. Franklin
Earl R. Franklin

Title Vice President and Secretary

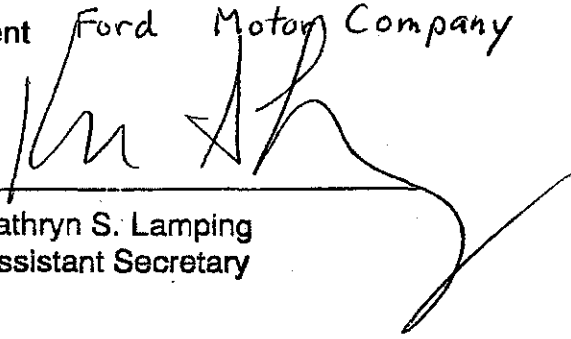
45

Agreed this 3rd day of July, 2007.

For Respondent Ford Motor Company

By

Title


Kathryn S. Lamping
Assistant Secretary

In re: Dearborn Refining Company
3901 Wyoming
Dearborn, Michigan,
CERCLA 106(a)
RCRA 7003(a)

Agreed this 3^d day of July, 2007.

For Respondent General Motors Corporation

By


James P. Wall
James P. WALLE

Title

Attorney P31198

Agreed this 2nd day of July, 2007.

For Respondent General Products Corporation

By  Guy M. Cassidy

Title President & CEO

Agreed this 1ST day of JULY, 2007.

② For Respondent Metaldyne Corporation, On Behalf Of Simpson Industries,

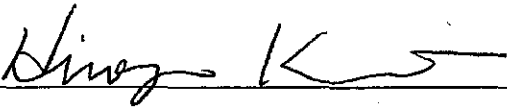
By Imperier A. Youac

Title Executive Vice President Human Resources +
Metaldyne University

Agreed this 2 day of July, 2007.

For Respondent

MICHIGAN AUTOMOTIVE COMPRESSOR, INC.

By 

Title President

Agreed this 09 day of July, 2007.

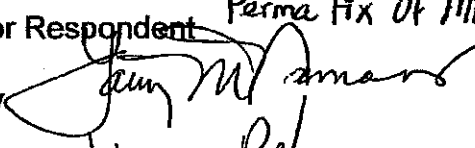
For Respondent Nachi Machining Technology Company

By 

Title President and COO

Agreed this 9th day of JULY, 2007.

For Respondent Perma Fix Of Michigan, Inc., On Behalf of Chem-Met Services, Inc.

By 

Title VICE-PRESIDENT

In re: Dearborn Refining Company
3901 Wyoming
Dearborn, Michigan,
CERCLA 106(a)
RCRA 7003(a)

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Agreed this 29 day of June, 2007.

RIMA MFG. CO.
For Respondent EDWARD J. Engle Jr.

By Edward J. Engle Jr.

Title President

Agreed this 3RD day of July, 2007.

For Respondent SAMUEL, SON & CO. MIDWEST INC. DA Puiey

By DA Puiey

Title ESP + CFO

Agreed this 16th day of July, 2007.

For Respondent SCHULTZ INC.

By A.J. [Signature]

Title OWNER

Arthur T. Schultz

Agreed this 10 day of July, 2007.

For Respondent The BOC Group, Inc. on behalf of Linde Gas, Inc.

By Michael Resh

A handwritten signature in dark ink, appearing to read "Michael Resh", is written over a horizontal line.

Title Head of Environmental Affairs, Region North America

Agreed this 12th day of July, 2007.

For Respondent TriMas Corporation, *On Behalf Of Hi-Vol Products and Draw tite*

By



Albert H. Bostain

Title Director of Environmental Health and Safety

Agreed this 5 day of July, 2007.

For Respondent Valassis Communications, Inc.

By Clara Tringali

Title Vice President - Anderson Printing Div. - Valassis

Agreed this 2nd day of July, 2007.

For Respondent Weavertown Transport Leasing, Inc.

By Dan J. [Signature]

Title President

In re: Dearborn Refining Company
3901 Wyoming
Dearborn, Michigan,
CERCLA 106(a)
RCRA 7003(a)

It is so ORDERED and Agreed this 23 day of August, 2007.

BY: Richard C. Karl
Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency
Region 5

BY: Margaret Guerriero
Margaret Guerriero, Director
Land and Chemicals Division
United States Environmental Protection Agency
Region 5

In re: Dearborn Refining Company
3901 Wyoming
Dearborn, Michigan,
CERCLA 106(a)
RCRA 7003(a)

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APPENDIX A LIST OF RESPONDENTS

**APPENDIX A
LIST OF RESPONDENTS**

1. Acemco Incorporated
2. Aureus Holdings, Ltd.
3. City of Dearborn
4. Comprehensive Environmental Solutions, Inc.
5. DaimlerChrysler Corporation
6. Eaton Corporation
7. Ford Motor Corporation
8. General Motors Company
9. General Products Corporation
10. Metaldyne Corporation, on behalf of Simpson Industries, Inc.
11. Michigan Automotive Compressor, Inc.
12. Nachi Machining Technology Co.
13. Perma-Fix of Michigan, Inc., on behalf of Chem-Met Services, Inc.
14. Rima Manufacturing Company
15. Samuel, Son & Co. Midwest Inc.
16. Schultz, Inc.
17. The BOC Group, Inc., on behalf of Linde Gas, Inc.
18. TriMas Corporation, on behalf of Hi-Vol Products and Draw tite
19. Valassis Communications, Inc.
20. Weavertown Transport Leasing, Inc.

In re: Dearborn Refining Company
3901 Wyoming
Dearborn, Michigan,
CERCLA 106(a)
RCRA 7003(a)

APPENDIX B SITE MAP

APPENDIX C

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REMOVAL ACTION**

**ADMINISTRATIVE RECORD
FOR
ADMINISTRATIVE ORDER ON CONSENT
FOR THE
DEARBORN REFINING SITE
DEARBORN, WAYNE COUNTY, MICHIGAN**

JUNE 26, 2007

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
1	00/00/00	U.S. EPA	Respondents	Administrative Settlement Agreement and Order on Consent for the Dearborn Refining Site	44
2	12/01/06	Gilezan, G., Dykema Gossett PLLC	Clarizio, R., U.S. EPA	Letter re: November 22, 2006 Informational Meeting Regarding the Dearborn Refining Site	2
3	07/31/07	U.S. EPA	Public	U.S. EPA Announcement re: Legal Settlement for the Dearborn Refining Site with a Public Comment Period Until July 31	2

**UPDATE #1
AUGUST 7, 2007**

1	06/12/07	Clarizio, R., U.S. EPA	Gilezan, G., Dykema Gossett, PLLC	E-Mail Transmission Forwarding Attached Final Administrative Order on Consent for the Dearborn Refining Site	91
2	06/19/07	Gilezan, G., Dykema Gossett, PLLC	Clarizio, R., U.S. EPA	E-Mail Transmission re: Group Members Decision on the AOC for the Dearborn Refining Site	2
3	06/28/07	Gilezan, G., Dykema Gossett, PLLC	Clarizio, R., U.S. EPA	E-Mail Transmission re: Confirmation of June 28, 2007 Telephone Conversation Concerning the AOC for the Dearborn Refining Site	3
4	06/29/07	Gilezan, G., Dykema Gossett, PLLC	Clarizio, R., U.S. EPA	Letter re: Confirmation that 19 Group Members have Agreed to Execute a Proposed Administrative Order on Consent for the Dearborn Refining Site	2

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5	06/29/07	Gilezan, G., Dykema Gossett, PLLC	Clarizio, R., U.S. EPA	E-Mail Transmission re: Confirmation that 19 Group Members have Agreed to Execute a Proposed Administrative Order on Consent for the Dearborn Refining Site	2
6	07/04/07	Heritage Newspapers	Public	Public Notice: U.S. EPA Announces Legal Settlement and Public Comment Period for the Dearborn Refining Site	1
7	07/11/07	Gilezan, G., Dykema Gossett, PLLC	Clarizio, R., U.S. EPA	E-Mail Transmission re: Group Members Signature Pages for the AOC for the Dearborn Refining Site w/ Reply History	5
8	07/11/07	Clarizio, R., U.S. EPA	Yangouyian, L., City of Dearborn	E-Mail Transmission re: Signature Pages from the City of Dearborn for the Dearborn Refining AOC w/ Reply History	2
9	07/12/07	Gilezan, G., Dykema Gossett, PLLC	Clarizio, R., U.S. EPA	E-Mail Transmission For- warding the Final AOC w/ Signature Pages for the Dearborn Refining Site	70
10	07/13/07	Yangouyian, L., City of Dearborn	Clarizio, R., U.S. EPA	E-Mail Transmission re: Signature Pages from the City of Dearborn for the Dearborn Refining AOC w/ Reply History	3
11	07/16/07	Yangouyian, L., City of Dearborn	Clarizio, R., U.S. EPA	Letter Forwarding Attached Signed Copy of Administra- tive Settlement Agreement for the Dearborn Refining Site	50
12	07/17/07	Hans, M., U.S. EPA	Clarizio, R. & R. Paulson, U.S. EPA	E-Mail Transmission re: U.S. EPA Interview with the Dearborn Press & Guide	1
13	07/18/07	Kelly, B., U.S. EPA	Clarizio, R., U.S. EPA & G. Gilezan, Dykema	E-Mail Transmission re: U.S. EPA's Public Notice for the Settlement Agreement for the Dear-	1

Gossett, PLLC

born Refining Site

Dearborn Refining AOC AR
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<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
14	07/23/07	Hans, M., U.S. EPA	Addressees	E-Mail Transmission re: Dearborn Press & Guide Article "EPA Expects Wyoming Steel Industrial Site Oil Cleanup to Cost About \$3 Million"	3
15	07/25/07	Clarizio, R., U.S. EPA	Yangouyian, L., City of Dearborn	E-Mail Transmission re: U.S. EPA's Receipt of Signatures from the City of Dearborn for Dearborn Refining AOC	1
16	07/27/07	Gilezan, G., Dykema Gossett, PLLC	Clarizio, R., U.S. EPA	E-Mail Transmission re: AOC Issues for the Dear- born Refining Site w/ Reply History	5
17	07/27/07	Gilezan, G., Dykema Gossett, PLLC	Clarizio, R., U.S. EPA	Letter Forwarding Attached Signature Pages from 19 Group Members to the Proposed Administrative Order on Consent for the Dearborn Refining Site	21
18	08/06/07	Pfundheller, J., U.S. EPA	Clarizio, R., U.S. EPA	E-Mail Transmission re: Public Comments Received for the Dearborn Refining AOC w/ Reply History	2